

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NELSON BRITO,

Plaintiff,

v.

No. 9:06-CV-00154  
(FJS/DEP)

ELIOT SPITZER, et al.,

Defendants.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

Nelson Brito, Pro Se  
Wende Correctional Facility  
Wende Road  
PO Box 1187  
Alden, NY 14004-1187

FOR DEFENDANTS:

HON. ANDREW M. CUOMO  
Attorney General of the  
State of New York  
The Capitol  
Albany, New York 12224

JEFFREY P. MANS, ESQ.  
Asst. Attorney General

**FREDERICK J. SCULLIN, JR., S.J.**

**DECISION AND ORDER**

The Court has reviewed Magistrate Judge David E. Peebles' July 2, 2007 Report-Recommendation and the entire file in this matter. The Court also extended the deadline for plaintiff to

file objections to August 21, 2007. See Dkt. No. 35.

Thereafter, plaintiff filed no objections to said Report-Recommendation. Accordingly, the Court hereby

**ORDERS** that Magistrate Judge Peebles' July 2, 2007 Report-Recommendation is **ADOPTED** in its entirety for the reasons stated therein; and the Court further

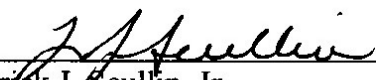
**ORDERS** that Defendants Spitzer's and Goord's motion to dismiss the claims against them is **GRANTED** without prejudice to Plaintiff amending his complaint to replead his claims against them; and the Court further

**ORDERS** that Plaintiff may file an amended complaint that contains repleaded claims against Defendant Spitzer and Goord **within thirty(30)days** from the filing date of this Order, and the Court further

**ORDERS** that, if Plaintiff fails to file an amended complaint that contains repleaded claims against Defendants Spitzer and Goord **within thirty (30) days** from the filing date of this Order, the Court will dismiss the claims against Defendant Spitzer and Goord **with prejudice** without further Order of this Court.

**IT IS SO ORDERED.**

DATED: September 6, 2007  
Syracuse, New York

  
Frederick J. Scullin, Jr.  
Senior United States District Court Judge